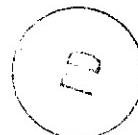


**ORIGINAL**

RECEIVED &amp; FILED

02 07-3 22-16

1 DEL HARDY, ESQ. (SBN 1122)  
 2 HARDY & ASSOCIATES  
 3 98 & 96 Winter Street  
 Reno, Nevada 89503  
 (775) 786-5800

4 Attorney for Albert G. Garland

5  
 6 IN THE UNITED STATES BANKRUPTCY COURT  
 7 IN AND FOR THE DISTRICT OF NEVADA  
 8 NORTHERN DIVISION

9  
 10 IN RE: ALBERT G. GARLAND, Case No. BK-N-01-33620

11 Debtor, CHAPTER 11

12 Social Security No. 564-74-0632 Motion No.:

-EX PARTE-  
MOTION TO SET ASIDE DISMISSAL OF  
CASE UNTIL PROPER NOTICE IS SENT  
TO ALL PARTIES OF INTEREST  
INCLUDING DEBTOR

15 Hearing Date:

16 Hearing Time:  
 17 /

18 COMES NOW, Debtor, ALBERT G. GARLAND, by and through his attorney, DEL HARDY, ESQ.,  
 19 and hereby requests this court to set aside the dismissal of case filed by this court on May 23, 2002, until  
 20 such time as all parties of interest have received notice of that dismissal or otherwise enter an order which  
 21 serves equity and justice to preserve the Debtor's interest in his home which has been foreclosed on in part  
 22 because the Debtor was unaware of the Order dismissing the case.

23 This Motion is made pursuant to the Bankruptcy Rules and Codes and in particular 11 U.S.C 105  
 24 which empowers this court to issue any order that is necessary or appropriate to carry out the provisions of  
 25 the title and to prevent any abuse of process.

26 This court entered its order on May 23, 2002. That order is attached hereto as Exhibit "A". The  
 27 court will note that Debtor's attorney did not sign off on that order. Additionally, the order was never sent  
 28 out and served upon anyone and there is no mailing matrix or Notice of Entry of Order on file in the case.

1 Neither the Debtor or Debtor's counsel were ever advised of the Order Granting Dismissal until a copy was  
2 obtained after a foreclosure occurred on Debtor's home. A foreclosure sale that the Debtor only found out  
3 about after the foreclosure occurred.

4 On June 12, 2002, Homeside Lending somehow found out about the court's May 23, 2002 Order of  
5 Dismissal and held a foreclosure sale on Debtor's home at 321 Ski Way, #83, Incline Village, Nevada,  
6 89450. This is Debtor's home and primary residence and has approximately \$100,000.00 worth of equity  
7 which is now gone away. Debtor had filed on June 19, 2002, a Faulty Sale Notice with the Washoe County  
8 Recorder's Office and to date, Debtor has not been asked to be moved from his home.

9 Homeside Lending however, refuses to set aside a foreclosure sale, therefore, it is necessary to  
10 respectfully ask this court to issue an order that provides that the Dismissal signed of May 23, 2002 is not  
11 effective until Notice of Entry of Order is sent to all interested parties including Debtor and Debtor's  
12 counsel. By doing so, the sale would then become void and Debtor could take the appropriate steps to tender  
13 the payments that Debtor has been ready, willing and able to do since March of 2002. The court will note  
14 in Exhibit "B", debtor tendered January and February 2002 payments which were accepted. No additional  
15 notices were ever sent of any pending foreclosure.

16 Debtor's counsel has provided a copy of this to parties requesting special Notice that being James  
17 L. Pagano, Esq. for Creditor Mahoney, Mortgage Companies and the U.S. Trustee's Office.

18 DATED this 3 day of July, 2002

20  
21 DEL HARDY, ESQ.  
22 Attorney for Debtor ALBERT G. GARLAND  
23  
24  
25  
26  
27  
28

1                   CERTIFICATE OF SERVICE

2                   Pursuant to Fed.R.Bankr.P. 9014, 7004 and Fed.R.Civ.P.4b(g), I, Debbie Roberts, hereby swear  
3 under penalty of perjury that I am over the age of 18, not a party to the within action, and that on the 3rd  
4 day of July, 2002, I served the foregoing documents by mailing a copy thereof by first class mail  
5 to:

6                   James L. Pagano, Esq.  
7                   Law Office of James L. Pagano  
8                   96 North Third Street, Suite 620  
9                   San Jose, CA 95112

10                  HomeSide Lending, Inc.  
11                  P.O. Box 44255  
12                  Jacksonville, FL 32231-4255

13                  HomeSide Lending, Inc.  
14                  P.O. Box 7198  
15                  Pasadena, CA 91109-7198

16                  Ginny Tillmanshofer  
17                  1309 Sandpiper  
18                  Palm Desert, CA 92260

19                  Malcolm, Cisneros & Houser  
20                  Trustee Corps  
21                  1401 N. Batavia Street  
22                  First Floor, Suite 102  
23                  Orange, CA 92867

24                  Nicholas Strozza,  
25                  Assistant U.S. Trustee  
26                  300 Booth Street, Room 2129  
27                  Reno, Nevada 89509

28                  Dated this 3rd day of July, 2002.

Debbie Roberts



MAY 15 1968

1 JAMES L. PAGANO, ESQ (CA State Bar No. 098185) RECEIVED AND FILED  
2 LAW OFFICES OF JAMES L. PAGANO  
3 96 North Third Street, Suite 620 02 MAY 23 AM 9:34  
4 San Jose, CA 95112 U.S. BANKRUPTCY COURT  
5 Telephone: (408) 999-5678 PATRICIA GRAY, CLERK  
6 Facsimile: (408) 999-5684  
  
Atorneys for Movants, Creditors, the ESTATE OF  
MERRILL J. MALONEY, by Sharon R. Maloney,  
its Personal Representative, and SHARON R.  
MALONEY, an individual

**IN THE UNITED STATES BANKRUPTCY COURT  
IN AND FOR THE DISTRICT OF NEVADA  
NORTHERN DIVISION**

**IN RE ALBERT G. GARLAND,** Case No. BK-N-01-33620  
Debtor, CHAPTER 11  
Social Security No. 564-74-0632 Motion No.:

**ORDER GRANTING DISMISSAL OF  
CHAPTER 11 CASE, WITH PREJUDICE  
TO ITS BEING REFILED, AND STAYING,  
AS MOOT, OBJECTIONS TO  
DISCHARGEABILITY OF CERTAIN  
DEBTS OWED BY DEBTOR AND  
DEBTOR'S CLAIM TO A HOMESTEAD  
EXEMPTION**

**Hearing Date: March 11, 2002**

**Hearing Time: 10:00 a.m.**

Courtroom No.: 1161

**Judge: Honorable Gregg W. Zive**

24 The Motion of Movants/Creditors, the Estate of Merrill J. Maloney and Sharon R. Maloney,  
25 an individual (collectively "MALONEY"), seeking an order dismissing the above-referenced case  
26 ("this Motion to Dismiss" or "the Motion"), with prejudice to its being refiled, initially came on for  
27 hearing before this Court on February 1, 2002. At that time, this Court, acknowledging the principal  
28 argument raised in response to the Motion by Debtor, Albert G. Garland ("DEBTOR"), to wit, that

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1 the Motion was filed and served before the expiration of the period during which DEBTOR could  
 2 exclusively offer, for approval, a Disclosure Statement, pursuant to 11 U.S.C. §1125, including a  
 3 prospective confirmable Plan of Reorganization ("the Plan"), and in order to permit DEBTOR this  
 4 opportunity, continued the hearing on the Motion to March 11, 2002, approximately one month after  
 5 that exclusivity period expired. The Court further ordered that DEBTOR file a proposed Disclosure  
 6 Statement and Plan on or before February 15, 2002. Additionally And, the Court announced on  
 7 February 1, that the further hearing of this Motion would trail the Court's consideration of the  
 8 proposed Disclosure Statement and Plan as, thereafter, filed by DEBTOR.

9 On or about March 11, 2002, DEBTOR appeared at the hearing on this motion by and  
 10 through his counsel of record, the Law Offices of Del L. Hardy by attorneys, Del L. Hardy, Esq. and  
 11 Teresa B. McKee, Esq.; the United States Trustee appeared by and through an Assistant United  
 12 States Trustee, Nicholas Strozza, Esq.; Creditors, the Estate of Merrill J. Maloney and Sharon R.  
 13 Maloney (collectively "MALONEY") appeared by and through their counsel of record, the Law  
 14 Offices of James L. Pagano by James L. Pagano, Esq.<sup>1</sup>; Scott Ward, Esq., of Germain and Young,  
 15 a California-licensed attorney retained by Creditor, Stanley Flake, as the Trustee of the F. Hanse  
 16 Trust ("Flake"), monitored the hearing, on behalf of that Creditor.<sup>2</sup>

17 This Court, having received and reviewed the proposed Disclosure Statement offered by  
 18 DEBTOR as well as the Plan, having signed and issued an order on this day denying, with prejudice  
 19 to its being re-filed, the Motion seeking approval of the said Disclosure Statement, and determining  
 20

---

21 <sup>1</sup> Mr. Pagano was admitted to practice *pro hac vice*, in this case only, by order of this Court  
 22 dated November 9, 2001. He was permitted to practice without having to associate Nevada-admitted  
 23 counsel pursuant to Local Rule, IA 10-2(c), on the same day.

24 <sup>2</sup> The Court was made aware by Mr. Ward that he is a licensed by the State of California to  
 25 practice law in that state's courts. Therefore, in order to appear in this matter, pursuant to the rules  
 26 of this Court, specifically LR 1A 10-2, Mr. Ward is required to file a verified petition to be admitted  
 27 to practice in this case, *pro hac vice*. Thereafter, before he appears in this Court, that Petition must  
 28 be considered and granted by the Court. (*Id.* sub.(b).) Mr. Ward confirmed that he has not yet filed  
 such a Petition. Therefore, he could not be permitted to formally appear and argue for to do otherwise  
 would have served to violate this Court's rules of practice. (*Id.*, sub (a) and (b)). Therefore, he was  
 permitted to be present, telephonically, at the hearing to merely monitor the arguments made.

1 that no purpose can be served by the maintenance of this case, as the Court has found that there is  
 2 no reasonable possibility that DEBTOR can re-organize and there is no evidence that DEBTOR can  
 3 propose a confirmable plan,<sup>3</sup> this Court now rules as follows:

4 Good cause therefor having been demonstrated, this Court hereby GRANTS this Motion to  
 5 Dismiss, finding that this case, from its beginning, has been utilized by DEBTOR as a litigation  
 6 tactic through which DEBTOR has attempted to receive a result that he could not obtain in any other  
 7 forum, a successful collateral attack against a judgment entered against DEBTOR and which has  
 8 been final for seven years, including the order denying motion to vacate that judgment brought by  
 9 DEBTOR, the denial of which motion by the Court that entered the referenced judgment has been  
 10 final for more than six years. For this reason and for the reasons more particularly set forth in the  
 11 referenced "Order Denying Approval of Proposed Disclosure Statement, *With Prejudice to its Being*  
 12 *Re-Filed*" (see footnote 1), the Court finds that this case is utterly and completely without merit and  
 13 is, for that reason, DISMISSED, at this time, with prejudice to its being re-filed.

14 The Court further incorporates herein, by reference, all of the oral findings that he made at  
 15 the hearing hereof on March 11, 2002 that are consistent herewith, as well as those consistent oral  
 16 findings made at the prior hearing on the Motion which occurred on February 1, 2002, and states that  
 17 such oral findings and conclusions are made pursuant to Federal Rule of Bankruptcy Procedure, Rule  
 18 7052, which incorporates Federal Rule of Civil Procedure, Rule 52, into bankruptcy cases.

19 In addition to the foregoing, as a consequence of the granting of the Motion, the objections  
 20 timely filed by MALONEY to DEBTOR's claim of an exemption, pursuant to Nevada's homestead  
 21 exemption law (Nevada Revised Statutes, §21.090(m)), involving that real property more commonly  
 22 known as 321 Ski Way Blvd., unit 83, Incline Village, NV, have been rendered moot. Thus, the said  
 23 objections are not subject to the absolute deadline established by the decision in *Taylor v. Freeland*  
 24 & *Kronz*, 503 U.S. 638, 643-644, 112 S.Ct. 644, 118 L.Ed 2d. 280 (1992). The Court expressly finds  
 25 that these objections were timely asserted and the Court, by its reference to this issue in this Order,  
 26

---

27       <sup>3</sup> See "Order Denying Approval of Proposed Disclosure Statement, *With Prejudice to Its Being*  
 28 *Re-Filed*", and the findings which are fully incorporated by reference therein as though set forth. That  
 Order and the said findings are also fully incorporated herein and made a part of this Order as well.

1 intends to protect MALONEY should the dismissal memorialized herein be reversed on appeal by  
2 a Court having jurisdiction to consider this Order, and the case, thereafter, is permitted to proceed.

3 In addition to the foregoing, the Court specifically finds that MALONEY have also timely  
4 filed objections to the dischargeability of certain identified claims owing to them by DEBTOR. The  
5 Court determines that the said objections to dischargeability are not subject to the absolute deadline  
6 set forth in the decisions of the United States Supreme Court, but the deadline for filing such  
7 dischargeability matters is hereby stayed, as moot, by the issuance of this Order, pending any reversal  
8 thereof by a court having jurisdiction to consider this Order.

9 Dated: May 23, 2002

10  
11 Honorable Gregg W. Zive  
Judge of the United States Bankruptcy Court

12 Approved as to Form and Content:

13 LAW OFFICES OF DEL HARDY & ASSOCIATES

14  
15 by: Del Hardy, Esq., Attorneys for Debtor,  
16 Albert G. Garland

17 UNITED STATES TRUSTEE, DISTRICT 17,

18  
19 by: Nicholas Strozza, Esq.,  
20 Assistant United State Trustee

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LAW OFFICES

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002

1 issue in this Order, intends to protect MALONEY should the dismissal memorialized herein be  
2 reversed on appeal by a Court having jurisdiction to consider this Order, and the case, thereafter, is  
3 permitted to proceed.

4 In addition to the foregoing, the Court specifically finds that MALONEY have also timely  
5 filed objection(s) to the dischargeability of certain identified claims owing to them by DEBTOR.  
6 The Court determines that the said objection(s) to dischargeability is(are) not subject to the absolute  
7 deadline set forth in the decisions of the United States Supreme Court, but the deadline for filing  
8 such dischargeability matters is hereby stayed, as moot, by the issuance of this Order, pending any  
9 reversal thereof by a court having jurisdiction to consider this Order.

10 Dated: April \_\_\_, 2002

11

12 \_\_\_\_\_  
13 The Honorable Gregg W. Zive  
14 Judge of the United States Bankruptcy Court

15 Approved as to Form and Content:

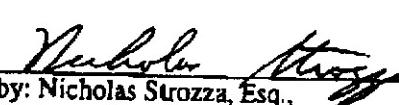
16 LAW OFFICES OF DEL HARDY & ASSOCIATES

17

18 by: Del Hardy, Esq. Attorneys for DEBTOR,  
19 Albert G. Garland

20 UNITED STATES TRUSTEE, DISTRICT 17,

21

22   
by: Nicholas Strozza, Esq.,  
Assistant United State Trustee

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23

24

25

26

27

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4-5d5  
ORDER GRANTING DISMISSAL OF CHAPTER 11 CASE, WITH PREJUDICE TO IT BEING  
REFILED, AND STAYING, AS MOOT, OBJECTIONS TO DISCHARGEABILITY OF CERTAIN  
DEBTS OWED BY DEBTOR AND DEBTOR'S CLAIM TO A HOMESTEAD EXEMPTION



Faulty Sale Notice

1 Recording requested by Albert G. Garland  
2

3 Regarding Property:

4  
5 APN: 126-120-18  
6

7 Address: 321 Ski Way # 83  
8 Incline Village NV. 89450  
9

10  
11 Notice Is Hereby Given That:

12 The Trustee Sale # U09045259N, conducted in Reno, Nevada, on June  
13 12, 2002 , was Faulty and Invalid for the following reasons:  
14

- 15  
16 1. Albert G. Garland, an owner of the subject property was in a Chapter 11  
17 Bankruptcy, at the time, as he had not received the notice of any discharge,  
18 and for that reason the sale was held prior to the 10 day waiting period,  
19 after a bankruptcy discharge as required by Federal Statute.  
20  
21 2. Homeside Lending, did accept payments on loan number 2728897 in January  
22 and February of 2002, some five months after the notice of default and  
23 election to sell was recorded on April 24, 2001.  
24  
25 3. Lender failed to provide an accurate accounting of funds required from the  
26 borrower, to cure or reinstate the loan, as requested by Albert G. Garland  
27 on April 23<sup>rd</sup> 2002.  
28  
29 4. Failure to notify junior lien holders, three in number, of the required funds  
30 to cure the default , also the time and place of the sale.  
31  
32 5. According to bidders present at the sale, there were a number of  
33 inappropriate actions by the crier , including but not limited, to not holding  
34 an open and thorough sale.  
35

36  
37 I do swear that the above statements are true and correct to the best of my  
38 knowledge,  
39

40  6/19/02

41 Albert G. Garland MAIL TO Box 5373  
42 321 Ski Way Blvd. Number 83 Incline Village NV. 89450-5373  
43 P.O. Box 5373  
44 Incline Village NV. 89450  
45 775 831-8754

46 Witnessed: \_\_\_\_\_

ACKNOWLEDGEMENT FORM -NRS 240.166STATE OF NevadaCOUNTY OF Washoe

SS:

This instrument was acknowledged before me on

2002, by Albert George GarlandJune 19M. Jessie Teller/Court Clerk

Notarial Officer - State of Nevada  
 Deputy Court Clerk-Lincoln Justice Court  
 Washoe County  
 NRS 240.1635; 4.350

Al G. Garland  
 SIGNATURE OF NOTARIAL OFFICER  
 TITLE Court Clerk

I, M. Jessie Teller, Notarial Officer, State of Nevada, do hereby acknowledge that the foregoing instrument was acknowledged before me on June 19, 2002, by Albert George Garland, who signed the instrument in my presence and in the presence of the other signatory, and that he is the person described in the instrument.

I further acknowledge that the instrument contains a true copy of the signature of the Notarial Officer.

I declare under penalty of perjury that the foregoing is true and correct.

Given at the County of Washoe, State of Nevada, on the day of June, 2002.

Attest: M. Jessie Teller, Notarial Officer, State of Nevada, on the day of June 19, 2002.

DOC # 2701331  
 06/19/2002 10:01A Fee:15.00

BK1  
 Requested By  
 ALBERT G GARLAND  
 Washoe County Recorder  
 Kathryn L. Burke - Recorder  
 Pg 2 of 2 RPTT 0.00

